



COVERSHEET

Minister	Hon Simeon Brown	Portfolio	Energy
Title of Cabinet paper	Offshore Renewable Energy Regulatory Regime Offshore Renewable Energy Bill: Approval for Introduction	Date to be published	20 December 2024

List of documents that have been proactively released		
Date	Title	Author
November 2024	Offshore Renewable Energy Bill: Approval for Introduction	Office of the Minister for Energy
November 2024	Offshore Renewable Energy Bill: Approval for Introduction LEG-24-MIN-0235	Cabinet Office
13 June 2024	2324-3049 Offshore renewable energy regime – offences, penalties, powers and appeals	MBIE
20 June 2024	2324-3446 Offshore Renewable Energy regulatory regime – permit variations	MBIE
25 July 2024	2324-4013 Offshore renewable energy - update on progress and establishment of a developer working group	MBIE
8 August 2024	2425-0577 Accelerated timing for Offshore Renewable Energy Bill and Hydrogen Action Plan	MBIE
19 August 2024	2425-0725 Engagement with iwi on the offshore renewable energy regulatory regime	MBIE
23 August 2024	2425-0230 Offshore renewable energy regulatory regime – decommissioning obligations	MBIE
23 August 2024	2324-3448 Offshore renewable energy regulatory regime – transmission infrastructure	MBIE
18 October 2024	BRIEFING-REQ-0004369 Offshore Renewable Energy Bill – draft Cabinet paper seeking approval for introduction and agreement to related policies	MBIE
7 November 2024	BRIEFING-REQ-0005576 Offshore Renewable Energy Bill – updated Cabinet paper seeking approval for introduction	MBIE
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions	Office of the Minister for Energy
June 2024	Offshore Renewable Energy Regulatory Regime: Policy Decisions Minute of Decision CBC-24-MIN-0041	Cabinet Office

May 2024	Offshore Renewable Energy Regulatory Regime	Office of the Minister for Energy
May 2024	Offshore Renewable Energy Regulatory Regime Minute of Decision ECO-24-MIN-0062	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

- a. Privacy of natural persons
- b. Confidential advice to Government



Cabinet Economic Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Offshore Renewable Energy Regulatory Regime

Portfolio **Energy**

On 1 May 2024, the Cabinet Economic Policy Committee:

Background

- 1 **noted** that the Government's priorities include fast-tracking permits to unleash investment in offshore wind generation, as part of the Electrify New Zealand work programme;
- 2 **noted** that in June 2023, Cabinet agreed in principle to key features of a proposed regulatory regime for offshore renewable energy [DEV-23-MIN-0126];
- 3 **noted** that Ministry of Business, Innovation and Employment (MBIE) officials have developed a proposed regime for offshore renewable energy, and that submissions on public consultations showed broad support for it;
- 4 **noted** that the Minister for Energy, in consultation with the Minister Responsible for RMA Reform, the Minister for Oceans and Fisheries, the Minister for Resources, the Minister for Regional Development and other Ministers as appropriate, intends to seek decisions from Cabinet in June 2024 on the proposals outlined in the paper under ECO-24-SUB-0062;
- 5 **noted** that the sector is seeking clarity on the timeline for the legislation and the opening of the first permitting round, to inform planning;
- 6 **authorised** the Minister for Energy to communicate the indicative timeline for the regime, noting the regime and timelines are subject to Cabinet decisions;

Purpose and scope of the regime

- 7 **noted** that the Minister for Energy intends to seek agreement that:
 - 7.1 the purpose of the regime will be to:
 - 7.1.1 give developers greater certainty to invest in offshore renewable energy projects;
 - 7.1.2 enable the selection of developments that best meet New Zealand's national interests;

- 7.2 the regime will facilitate the development (including construction, operation and decommissioning) of all commercial offshore renewable energy infrastructure (including offshore transmission infrastructure) in New Zealand up to the 200 nautical mile limit from the coastline (i.e. up to and including the Exclusive Economic Zone);
- 7.3 the regime will align with, and not duplicate, environmental consenting regimes, including the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012;

Design of the permitting regime

- 8 **noted** that the Minister for Energy intends to seek agreement that:
- 8.1 the regulatory regime will include a permitting regime covering two classes of permits: feasibility permits and commercial permits;
- 8.2 a feasibility permit will give the holder the exclusive right to apply for a commercial permit for the area (or a portion of the area) covered by the feasibility permit;
- 8.3 applications for resource or marine consents relating to the construction and operation of offshore renewable energy infrastructure under the Resource Management Act 1991 and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 can only be accepted for consideration under those Acts if a feasibility permit covering the area has been granted to the applicant;
- 8.4 a commercial permit must be obtained before construction begins;
- 9 **noted** that the Minister for Energy intends to seek agreement that:
- 9.1 to avoid the risk of land banking by some developers, applications for resource or marine consents lodged but not determined before the legislation is in force must be declined if a feasibility permit covering the area is not granted to the applicant in the first round (intended to be in 2026);
- 9.2 the Fast-track Approvals legislation will be amended so that applications for marine consents and resource consents relating to offshore renewable energy projects are eligible once the offshore renewable energy regulatory regime is in force;
- 9.3 the selection of areas for development will be developer-led (meaning developers will identify and apply for sites), with the ability for the government to select sites if appropriate in future;
- 9.4 feasibility permits will not prevent other authorised non-offshore renewable energy activities (e.g. mining or aquaculture) from gaining environmental consents within the permit area, potentially excluding offshore renewable energy developments from being consented;

Decision-making

- 10 **noted** that the Minister for Energy intends to seek agreement that:
- 10.1 the Minister for Energy will make decisions on the allocation, variation and revocation of permits;

- 10.2 the allocated permits will have a prescribed area, start date, end date, and be subject to such conditions as are necessary to ensure that activities are undertaken in accordance with agreed plans, and avoid or manage any adverse or unauthorised activities over the permit duration and such other relevant conditions the Minister considers appropriate;

Feasibility permits

- 11 **noted** that the Minister for Energy intends to seek agreement that feasibility permits:
- 11.1 will be allocated within application rounds initiated by the Minister for Energy, and may be limited by generation capacity, spatial area or technology type;
 - 11.2 will be awarded or declined based on an assessment of the following factors to select the projects that are most likely to deliver the greatest benefits for New Zealand:
 - Primary considerations**
 - 11.2.1 energy system benefits;
 - 11.2.2 technical and financial capability;
 - Additional considerations**
 - 11.2.3 wider economic benefits;
 - 11.2.4 decommissioning arrangements;
 - 11.2.5 compliance record;
 - 11.2.6 iwi and hapū engagement, as outlined in paragraph 18 below;
 - 11.2.7 management of existing rights, interests and limitations;
 - 11.2.8 national security or public order risks;
 - 11.3 will not have a legislated maximum area (although the regulator may issue guidance on this);
 - 11.4 will cover a single contiguous area that is reasonable for the proposed development (in New Zealand, this is likely to be around 250km² for 1GW developments);
 - 11.5 will have a maximum duration of seven years;
 - 11.6 require permit holders to disclose data obtained during their feasibility studies to the regulator either when they obtain a commercial permit or when a feasibility permit expires, is revoked or surrendered;
 - 11.7 will have ‘use it or lose it’ provisions to enable the Minister to revoke the permit if the holder does not begin feasibility activities within 12 months or make effective use of it, without reasonable justification;
 - 11.8 will include a requirement for the regulator to consult publicly on key details of applications before permitting decisions are made;

- 12 **noted** that the Minister for Energy intends to seek agreement that an applicant may not seek multiple permits within the same geographic area within a feasibility round, to encourage competition and market participation;

Commercial permits

- 13 **noted** that the Minister for Energy intends to seek agreement that commercial permits:
- 13.1 may be sought by a feasibility permit holder for any area within the spatial boundaries of the applicant's feasibility permit, at any time within seven years of the award of the feasibility permit;
 - 13.2 may be awarded following an application from the feasibility permit holder and an assessment that is independent of other commercial permit applications (i.e. non-comparative);
 - 13.3 will not be subject to public consultation;
 - 13.4 will have an initial duration of up to 40 years, with the ability to seek extensions up to a further 40 years;
- 14 **noted** that the Minister for Energy intends to seek agreement that assessment of commercial permits will be based on the following considerations:
- 14.1 technical and financial readiness;
 - 14.2 decommissioning arrangements;
 - 14.3 iwi and hapū engagement;
 - 14.4 national security or public order risks;

Permit variation

- 15 **noted** that the Minister for Energy intends to seek agreement that:
- 15.1 the Minister may approve, on the request of the permit holder, the following variations: minor extensions to permit area, extensions to commercial permit duration, transfers or change of control of the permit holder and permit conditions;
 - 15.2 extensions to the feasibility permit duration or significant extensions to the permit area that alter generation capacity or impact neighbouring developments will require a new permit;

Revenue-gathering

- 16 **noted** that the Minister for Energy intends to seek agreement that the legislation will not provide for a revenue-gathering mechanism, such as a royalty scheme, as this is likely to significantly deter investment and the increased cost of projects would flow through to users;
- 17 **noted** that the Minister for Energy intends to separately consider whether there should be a mechanism to ensure New Zealand receives appropriate value from new export products produced from renewable electricity, such as green hydrogen, methanol or ammonia;

Treaty settlements

- 18 **noted** that the Minister for Energy intends to seek agreement that:
- 18.1 applicants will be required to identify relevant rights stemming from Treaty of Waitangi settlements as part of applications and must consult relevant iwi, hapū or Māori groups on the proposed development/permit application before applying;
 - 18.2 applicants' engagement and identification of relevant rights stemming from Treaty settlements will be considered by the Minister when granting permits;
 - 18.3 the regime will require the Minister to consult with relevant iwi on the impacts of applications on relevant rights stemming from Treaty settlements;
 - 18.4 the regime will include a clause reflecting the approach taken in clause 6 of the Fast-track Approvals Bill 2024, which requires decision-makers to act in a manner consistent with obligations under Treaty settlements and customary rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019;

Appeal rights

- 19 **noted** that the Minister for Energy intends to seek agreement that, in addition to judicial review, there will be some limited rights of appeal to the High Court for key permitting decisions (such as a decline of a commercial permit application or the revocation of a permit) with the following limitations:
- 19.1 appeals would be limited to points of law;
 - 19.2 appeals would be available only to the person who has applied for or holds the permit to which the contested decision relates;
 - 19.3 the decision to decline a feasibility permit application would not be able to be appealed;
- 20 **noted** that resource and marine consenting processes will provide an opportunity for any affected party to submit on and subsequently appeal consent decisions;

Transmission infrastructure

- 21 **noted** that the Minister for Energy intends to seek agreement in principle that:
- 21.1 commercial permit-holders will be responsible for planning, building and funding new offshore transmission infrastructure;
 - 21.2 Transpower will become responsible for owning, operating and decommissioning offshore transmission infrastructure and may be involved in prescribing technical design standards;

Decommissioning

- 22 **noted** that the Minister for Energy intends to seek agreement that the regime will ensure offshore renewable energy assets are decommissioned at the end of their operational lives, by requiring permit holders to decommission and:

- 22.1 to provide a decommissioning plan to the regulator and to the Environmental Protection Authority (via consequential amendments to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012); and
- 22.2 to provide a cost estimate to the regulator based on the cost of the developer fully removing infrastructure;
- 23 **noted** that the Minister for Energy intends to seek agreement that:
- 23.1 permit holders will be required to obtain and maintain one or more financial securities to enable the Crown to recover decommissioning cost in the event of default by the permit holder;
- 23.2 the form of financial security to be obtained, and the amount to be secured, will be determined by the Minister based on the cost estimate and will be required to reach certain proportions of overall decommissioning cost at particular milestones, reflecting points of particular risk in the lifetime of the project;
- 23.3 there will be flexibility for the Minister to impose different financial security requirements and conditions depending on the risk profile of the developer and the nature of the project;
- 24 **noted** that the Minister for Energy intends to seek agreement that if a commercial permit is transferred from one party to another:
- 24.1 the Minister's approval must have been gained before the transfer occurs;
- 24.2 the new permit holder must put in place one or more financial securities of combined equal or greater value than the existing security/securities;
- 24.3 there is no continuing obligation on the original permit holder to decommission (i.e. no trailing liability);

Safety zones

- 25 **noted** that the Minister for Energy intends to seek agreement that the regime will enable safety zones of up to 500 metres to be established around offshore renewable energy infrastructure, which will prohibit unauthorised persons or vessels from entering the area;
- 26 **noted** that the Health and Safety at Work Act 2015 will apply to offshore renewable energy workplaces;

Compliance and enforcement

- 27 **noted** that the Minister for Energy intends to seek agreement that conditions, similar to those imposed through the Crown Minerals Act 1991, may be applied to permits to give effect to the objectives of the regime, manage decommissioning risks, enable the effective administration of the regime and set reporting or disclosure obligations;
- 28 **noted** that the Minister for Energy intends to seek agreement that the regulator be empowered with a standard set of powers and functions, largely aligned with those in the Crown Minerals Act 1991, to enforce compliance with the regime, including the ability to:
- 28.1 monitor and request information from permit holders;
- 28.2 check compliance by authorising officers to conduct inspections of project sites;

- 28.3 obtain a search warrant and conduct investigations into confirmed or alleged non-compliance;
- 28.4 enforce compliance by issuing warnings, compliance notices, entering into enforceable undertakings, pursuing civil penalties or prosecuting criminal offences;
- 28.5 keep and maintain a public register of permits issued to publicly disclose key details of permit applications and permit decisions, which are not commercially sensitive;
- 29 **noted** that the Minister for Energy, in consultation with the Minister of Justice, intends to seek agreement to establish, in line with the Crown Minerals Act 1991 and the Australian Offshore Energy Infrastructure Act 2021, a set of criminal offences (with corresponding penalties and defences where appropriate) or contraventions liable for civil penalty to address problematic behaviour, including but not limited to:
- 29.1 parties constructing or operating offshore renewable energy infrastructure without holding a commercial permit;
- 29.2 failures to comply with permitting conditions;
- 29.3 failures to decommission or to adhere to the decommissioning plan (which includes specific liabilities on directors that knowingly breach their obligations);
- 29.4 any attempt to deceive, mislead or obstruct the regulator;
- 29.5 failures to comply with compliance notices or enforceable undertakings;
- 29.6 intentionally interfering with offshore renewable energy infrastructure;
- 30 **noted** that the Minister for Energy, in consultation with the Minister of Justice, intends to seek agreement that the most significant offences relate to failures to decommission, which should be subject to maximum penalties of \$1 million for an individual or \$10 million for any other entity, or three times the cost of decommissioning or imprisonment of up to two years;

Implementation

- 31 **noted** that the Minister for Energy intends to seek agreement that the regulator will be the Ministry of Business, Innovation and Employment;
- 32 **noted** that the Minister for Energy intends to seek agreement that the regulator may provide information to, and require information from, other government agencies where that information:
- 32.1 is held for the performance or exercise of either the regulator or the specified entity's functions, duties or powers; and
- 32.2 would assist the regulator or the specified agencies in the performance or exercise of their functions, duties or powers – including the assessment of permit applications;

Financial implications

- 33 **noted** that the Minister for Energy intends to seek agreement that the costs of administering the regime will be fully recovered from permit-applicants and permit-holders, through application and annual fees, to be prescribed in secondary legislation;

- 34 **noted** that, subject to Cabinet decisions in June 2024, MBIE will provide further advice on the proposed cost recovery regime in the second quarter of 2025;
- 35 **noted** that, if the regime proceeds, there is expected to be an initial deficit before the proposed cost recovery regime commences, which MBIE considers it can manage from its balance sheet;

Legislative implications

- 36 **noted** that the Minister for Energy intends to seek agreement that:
- 36.1 the proposals will be given effect through the Offshore Renewable Energy Bill (the Bill), which has a category 5 priority on the 2024 Legislation Programme (to be referred to a select committee by the end of 2024);
 - 36.2 the Bill should include a provision stating that the Act will bind the Crown;
 - 36.3 the proposed regime will require consequential amendments to other legislation, including the Resource Management Act 1991 and the Exclusive Economic Zone Act 2012;
- 37 **noted** that the Minister for Energy intends to seek agreement that the Bill will include regulation-making powers, including the ability to make regulations to prescribe:
- 37.1 the permit application, assessment and variation process, including the detail of the considerations set out in paragraphs 11.2 and 14 above;
 - 37.2 the fees charged to enable full cost recovery;
 - 37.3 the appropriate level and form of financial security to support decommissioning obligations;
 - 37.4 application and information requirements, including the implementation of a public register;
 - 37.5 details of the conditions that may be attached to permits;
 - 37.6 requirements relating to change of control of permit-holders and transfer of permits;
- 38 **noted** that:
- 38.1 MBIE will begin preparing drafting instructions to the Parliamentary Counsel Office on the basis of the regime outlined in the paper under ECO-24-SUB-0062;
 - 38.2 the Minister for Energy will need to issue drafting instructions to the Parliamentary Counsel Office for the Offshore Renewable Energy Bill in early June 2024, to enable the introduction of the Bill by the end of 2024;
 - 38.3 the Minister for Energy will also seek agreement to issue drafting instructions for the associated secondary legislation;
- 39 **noted** that the Minister for Energy will seek delegated authority to take further decisions, in line with the policy decisions agreed by Cabinet, on:
- 39.1 further details of the permit application assessment and allocation process (including procedural requirements relating to Treaty settlements);

- 39.2 further details of the decommissioning obligations and alignment, where necessary, with any proposed changes to the decommissioning arrangements in the Crown Minerals regime;
- 39.3 whether fees collected should be used to support iwi and hapū engagement with developers;
- 39.4 the process for considering applications for permit variations;
- 39.5 which decisions can be appealed and whether there are other limitations on appeal rights beyond the ability to appeal on points of law only;
- 39.6 the details of the offences, defences and penalties introduced by the regime, in consultation with the Minister of Justice, including whether permits can be revoked as a penalty beyond the proposed ‘use it or lose it’ provisions;
- 39.7 any other functions, powers or duties needed for the regulator to ensure compliance with permit conditions, the Act, and/or regulations;
- 39.8 the details and process for activating the ‘use it or lose it’ provision described in paragraph 11.7 above that applies to feasibility permits;
- 39.9 entities the regulator requires information from or needs to provide information to including what that information may be and how it is handled;
- 39.10 the regulation-making powers in addition to those detailed above, which would be confirmed when seeking approval to introduce the Bill;
- 39.11 any other minor or technical issues that arise during the drafting of legislation and its passage through the House.

Janine Harvey
Committee Secretary

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters
Hon David Seymour
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Brooke van Velden
Hon Shane Jones
Hon Simeon Brown
Hon Judith Collins
Hon Tama Potaka
Hon Matt Doocey
Hon Simon Watts
Hon Melissa Lee
Hon Penny Simmonds
Hon Chris Penk
Hon Andrew Bayly
Hon Andrew Hoggard
Hon Mark Patterson
Simon Court MP

Officials present from:

Office of the Prime Minister
Office of the Deputy Prime Minister
Office of the Minister of Local Government
Officials Committee for ECO
Ministry of Business, Innovation and Employment